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No. 89-1782

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

DAVID HOFFMAN, COMMISSIONER, DEPARTMENT
OF COMMUNITY AND REGIONAL AFFAIRS,
STATE OF ALASKA,

Petitioner,

v.

NATIVE VILLAGE OF NOATAK AND CIRCLE VILLAGE,
Respondents.

On Writ of Certiorari To The United States
Court of Appeals For The Ninth Circuit

**BRIEF AMICUS CURIAE ON BEHALF OF
THE METLAKATLA INDIAN COMMUNITY
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	Page
INTERESTS OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	4
ARGUMENT	5
ALASKA NATIVE COMMUNITIES ARE TRIBES FOR PURPOSES OF 28 U.S.C. § 1362 IF REORGANIZED PURSUANT TO SECTION 16 OF THE INDIAN REORGANIZATION ACT, 25 U.S.C. § 476, OR DEFINED AS TRIBES IN OTHER FEDERAL LEGISLATION	5
I. TRIBAL STATUS IS A POLITICAL QUES- TION	5
II. REORGANIZATION UNDER THE IRA IS CONCLUSIVE AS TO TRIBAL STATUS.....	7
III. FEDERAL STATUTES RECOGNIZE ALASKA NATIVE VILLAGES AS INDIAN TRIBES	10
CONCLUSION	13

TABLE OF AUTHORITIES

CASES	Page
<i>Alaska Pacific Fisheries v. United States</i> , 248 U.S. 78 (1918)	2, 3
<i>Atkinson v. Huldane</i> , 569 P.2d 151 (Alaska 1977) ..	3
<i>Chilkat Indian Village v. Johnson</i> , — F. Supp. —, No. J84-024 Civil (D. Alaska Oct. 9, 1990) ..	3
<i>Mashpee Tribe v. New Seabury Corp.</i> , 592 F.2d 575 (1st Cir.), cert. denied, 444 U.S. 866 (1979)	7
<i>Metlakatla Indian Community v. Egan</i> , 369 U.S. 45 (1962)	3
<i>Montoya v. United States</i> , 180 U.S. 261 (1901)	6
<i>Native Village of Venetie v. State of Alaska</i> , — F.2d — (9th Cir.), decided Nov. 6, 1990, Slip Op. 13,583	7
<i>Passamaquoddy Tribe v. Morton</i> , 528 F.2d 370 (1st Cir. 1975)	7
<i>Price v. Hawaii</i> , 764 F.2d 623 (9th Cir. 1985), cert. denied, 474 U.S. 1055 (1986)	8
<i>Santa Clara Pueblo v. Martinez</i> , 436 U.S. 49 (1978)	9
<i>Tee-Hit-Ton Indians v. United States</i> , 348 U.S. 272 (1955)	3
<i>Tlingit and Haida Indians v. United States</i> , 177 F. Supp. 452 (Ct. Cl. 1959)	3
<i>United States v. Holliday</i> , 70 U.S. (3 Wall) 407 (1866)	4, 5
<i>United States v. Sandoval</i> , 231 U.S. 28 (1913)	5
<i>Village of Noatak v. Hoffman</i> , 896 F.2d 1157 (9th Cir. 1990)	7
FEDERAL STATUTES	
25 U.S.C. § 450	12
25 U.S.C. § 450a	11
25 U.S.C. § 450b	6, 10
25 U.S.C. § 450f	11
25 U.S.C. § 450g	11
25 U.S.C. § 450h	11
25 U.S.C. § 450n	12
25 U.S.C. § 473	6

TABLE OF AUTHORITIES—Continued

	Page
25 U.S.C. § 476	2, 3, 4, 7
25 U.S.C. § 495	2, 3
25 U.S.C. § 1452	6
25 U.S.C. § 1603	6
25 U.S.C. § 1903	6
28 U.S.C. § 1362	4, 7, 11, 12
43 U.S.C. § 1602	6
43 U.S.C. § 1618	2, 3
15 Stat. 539 (1867)	6
26 Stat. 1101 (1891)	2
52 Stat. 593 (1938)	2
85 Stat. 688 (1971)	2
ALASKA STATUTES	
AS § 29.60.100	3
AS § 29.60.140	3
AS § 29.60.350-375	3
AS § 29.89.010	3
AS § 29.89.050	3
AS § 43.20.016	3, 4
FEDERAL REGULATIONS	
25 C.F.R. § 81.1	8
25 C.F.R. § 81.1-81.24	3
25 C.F.R. § 83.6	6
25 C.F.R. § 83.7	7
40 Fed. Reg. 5,682	6
50 Fed. Reg. 6,055	6
51 Fed. Reg. 25,115	5, 6
53 Fed. Reg. 52,829	5, 6
MISCELLANEOUS	
Alaska Governor's Admin. Order No. 123, Sept. 10, 1990	7
Constitution and By-Laws of the Metlakatla Indian Community, Annette Islands Reserve, Alaska	9, 10
F. Cohen, Handbook of Federal Indian Law (1942 ed.)	6, 8

TABLE OF AUTHORITIES—Continued

	Page
F. Cohen, Handbook of Federal Indian Law (1982 ed.)	5, 9, 10, 12
Governor's Task Force, Report on Federal-State-Tribal Relations Submitted To Governor Bill Sheffield (1986)	8
Kisken, The Uncertain Legal Status of Alaska Natives After <i>Native Village of Stevens v. Alaska Management & Planning</i> : Exposing the Fallacious Distinctions Between Alaska Natives and Lower 48 Indians, 31 Ariz. L. Rev. 405 (1989)	5
Russian American Treaty of Cession, 1867, Article III	6

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BRIEF AMICUS CURIAE ON BEHALF OF
THE METLAKATLA INDIAN COMMUNITY
IN SUPPORT OF RESPONDENTS

Amicus Metlakatla Indian Community ("the Community" or "the Tribe") submits this brief because this Court's decision in this case could vitally affect the Tribe's sovereign governmental authority and that of other tribes in Alaska. We urge the Supreme Court to uphold the Ninth Circuit's decision below.

INTEREST OF AMICUS CURIAE

Amicus Metlakatla Indian Community is a federally recognized tribe exercising jurisdiction over the Annette Islands Reserve in Southeast Alaska. This reservation was established by Congress for "the use of the Metlakahtla Indians, and those people known as the Metlakahtlans who,

on March 3, 1891, had recently emigrated from British Columbia to Alaska, and such other Alaska Natives as may join them." Act of March 3, 1891, 26 Stat. 1101, 25 U.S.C. § 495.¹ The Tribe governs itself under a Constitution and By-laws approved on August 23, 1944, by the Secretary of the Interior pursuant to section 16 of the Indian Reorganization Act, 25 U.S.C. § 476. The Tribe has a strong interest in the preservation of tribal access to federal courts to redress state wrongs, and in the continued recognition of its own status as a governing body of a federal Indian reservation in Alaska.

The Tribe shares its status as an IRA-organized Indian tribe with many other Alaska Native villages but with the distinction that it occupies the only federal Indian reservation, the Annette Islands Reserve, within the State of Alaska. The reservation status of the reserve was expressly preserved by section 19 of the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. § 1618.²

¹ In *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918), this Court stated the reasons for the establishment of Annette Islands Reserve:

"The purpose of creating the reservation was to encourage, assist, and protect the Indians in their effort to train themselves to habits of industry, become self-sustaining, and advance to the ways of civilized life."

² Alaska Native Claims Settlement Act, Pub. L. No. 92-203, § 19(a), 85 Stat. 688, 710 (1971) (current version at 43 U.S.C. § 1618(a) (1982)) states:

"Notwithstanding any other provision of law, and except where inconsistent with the provisions of this Act, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for administration of Native affairs, including those created under the Act of May 31, 1938 (52 Stat. 593), are hereby revoked subject to any valid existing rights of non-Natives. This section shall not apply to the Annette Islands Reserve established by the Act of March 3, 1891 (26 Stat. 1101) and no person enrolled in the Metlakatla Indian Community of the Annette Islands Reserve shall be eligible for benefits under this Act."

The Community's tribal status has been recognized and confirmed by Congress, the Executive, and the Judiciary.³

As with respondents and other tribal amici, the State in its distribution of state assistance funds has failed to properly accord tribal status to the Tribe. The Tribe receives payments under the Revenue Sharing Program, Alaska Stat. §§ 29.89.010 and 29.89.050 (1984)⁴ and the Municipal Assistance Program, Alaska Stat. § 43.20.016 (1984).⁵ Under the Municipal Assistance Program the

³ For Congressional recognition see, e.g., 25 U.S.C. §§ 450-450n, 25 U.S.C. § 495. For Executive recognition see 25 U.S.C. § 476; 25 C.F.R. §§ 81.1-81.24 (1990). For judicial recognition see *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918); *Metlakatla Indian Community v. Egan*, 369 U.S. 45 (1962). See also *Atkinson v. Huldane*, 569 P.2d 151 (Alaska 1977). As to other Alaska Native tribes, see *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 at 273, 275, 279, 282, 285, 286 (1955) (noting at various points the tribal status of the Tlingit Indians generally and the Tee-Hit-Ton Band in particular); accord *Tlingit and Haida Indians v. United States*, 177 F. Supp. 452, 455-456 (Ct. Cl. 1959); *Chilkat Indian Village v. Johnson*, — F. Supp. —, No. J84-024 Civil (D. Alaska Oct. 9, 1990) (amicus Chilkat Indian Village held to be a tribe because of history of Congressional and Executive recognition under IRA and ANCSA and adjudication of clan property remanded to tribal court for decision).

⁴ Alaska Stat. §§ 29.89.010 and 29.89.050 are currently codified at Alaska Stat. §§ 29.60.100 and 29.60.140 (1990), respectively. They have been modified to include communities without Native village governments.

⁵ The Community became eligible for participation in the Municipal Assistance Program in 1985 upon passage of 1985 Alaska Sess. Laws ch. 90. Chapter 90 contained amendments to Alaska Stat. § 43.20.016 expanding the definition of a municipality to include "a municipality organized under the federal law as an Indian reserve that existed before enactment of 43 U.S.C. § 1618(a) and is continued in existence under that subsection." At the same time, the State enacted legislation transferring the substance of Alaska Stat. § 43.20.016 to Alaska Stat. §§ 29.60.350-375 (1990), where the Municipal Assistance Program is currently codified. 1985 Alaska Sess. Laws ch. 74.

State authorized payments to the Community provided that it first establish a community development corporation to receive and administer the assistance funds. The State imposed two additional requirements: first, the development corporation's board of directors was to be determined in an election open to both member and non-member residents of the Reservation, and, second, the Community was to deliver a waiver of sovereign immunity against State actions to recover any of the assistance funds. Alaska Stat. § 43.20.016(e). These actions are inconsistent with the Community's status as a federally recognized tribe. The State's insistence upon a board whose membership is open to election by non-members with the authority to determine how the assistance funds are distributed has diluted the Tribe's governmental authority over the Annette Islands Reserve as established by federal law.

In the decision below, the Ninth Circuit Court of Appeals found that those Alaska Native villages which are listed in ANCSA or which are organized under section 16 of the IRA, 25 U.S.C. § 476, are federally recognized tribes and, as such, may sue the State of Alaska under 28 U.S.C. § 1362. Amicus Metlakatla Indian Community, which is organized under the IRA, respectfully supports that decision.

SUMMARY OF ARGUMENT

Tribal status is a political question. Once a Congressional or Executive determination of tribal status has been made, that determination is binding upon the courts. *United States v. Holliday*, 70 U.S. (3 Wall) 407, 419 (1866). Congress and the Executive have recognized the tribal status of those Alaska Native communities that have reorganized under the IRA, 25 U.S.C. § 476, or are defined as tribes in other federal legislation. Thus, the Court should also find that these communities are "tribes" within the meaning of 28 U.S.C. § 1362.

ARGUMENT

The issue of tribal status demands that we recognize the political existence of this country's native peoples. In Alaska alone, the Indian, Aleut, and Eskimo peoples comprise over 200 self-governing Native American communities.⁶ Indicative of the cultural diversity among the Alaska Native population is the presence of twenty spoken Native languages.⁷ The existence of such cultural diversity is an extraordinary, yet mostly unrecognized, asset. In order to preserve the integrity and existence of this country's Alaska Native communities, the courts must recognize their tribal status.

I. TRIBAL STATUS IS A POLITICAL QUESTION.

The tribal status of Alaska Native villages, generally, is clear. Congress and the Executive have historically recognized tribes in a variety of ways, including treaties, statutes, agreements, executive orders, appropriations, and administrative action. Since the determination of tribal status is a political question, Congressional or Executive recognition is binding upon the courts. *United States v. Holliday*, 70 U.S. (3 Wall) 407, 419 (1866).⁸ The political branches have frequently recognized the

⁶ See Secretary of Interior's list of Indian tribes recognized and receiving services from the Bureau of Indian Affairs, 51 Fed. Reg. 25,115 (1986); 53 Fed. Reg. 52,829 (1988).

⁷ Kisken, *The Uncertain Legal Status of Alaska Natives After Native Village of Stevens v. Alaska Management & Planning: Exposing the Fallacious Distinctions Between Alaska Natives and Lower 48 Indians*, 31 Ariz. L. Rev. 405, 408 (1989).

⁸ In *United States v. Sandoval*, 231 U.S. 28, 46 (1913), this Court suggested that the only limitation upon Congressional or Executive authority to recognize tribes is a prohibition against arbitrary recognition. See also F. Cohen, *Handbook of Federal Indian Law* 5 (1982). Note: Cohen's *Handbook* has undergone three editions—1942, 1953 and 1982. The 1942 edition is still frequently cited because it contains valuable commentary not repeated in the later editions. We cite both the 1942 and 1982 editions herein.

tribal status of Alaska Native villages in treaties, statutes, and administrative action.⁹ Therefore, this Court should recognize the tribal status of those Alaska Native villages already recognized by Congress and the Executive.¹⁰ The Ninth Circuit Court of Appeals has already

⁹ See, e.g., Article III of the 1867 Russian American Treaty of Cession, 15 Stat. 539 (1867) (providing that "the uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country"); ANCSA, 43 U.S.C. § 1602(c) (defining Native villages to include "any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title"); the Indian Reorganization Act, 25 U.S.C. § 473 (the term "tribal organization" includes "the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 1602(c) of Title 43)"); the Indian Financing Act, 25 U.S.C. § 1452(c) (tribe defined to include "Native villages and Native groups . . . as defined in the Alaska Native Claims Settlement Act"); the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450b(e) (Indian tribe defined to include "any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act"); the Indian Health Care Improvement Act, 25 U.S.C. § 1603(d) (Indian tribe defined to include "any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act"); the Indian Child Welfare Act, 25 U.S.C. § 1903(8) (Indian tribe defined to include "any Alaska Native village as defined in section 1602(c) of Title 43"); and publication by the Secretary of the Interior of lists of recognized tribes in the Federal Register under 25 C.F.R. § 83.6 in 40 Fed. Reg. 5,682 (Nov. 24, 1982), 50 Fed. Reg. 6,055 (Feb. 13, 1985), 51 Fed. Reg. 25,115 (July 10, 1986), and 53 Fed. Reg. 52,829 (Dec. 29, 1988). See also Cohen, *Handbook of Federal Indian Law* 67 (1942).

¹⁰ In *Montoya v. United States*, 180 U.S. 261, 266 (1901), this Court set forth criteria for the determination of the tribal status of those Indian or Alaska Native communities that had not been previously recognized by Congress or the Executive:

"By 'tribe' we understand a body of Indians of the same or similar race, united in a community under one leadership or

done so in both the case below and *Native Village of Venetie v. State of Alaska*, — F.2d — (9th Cir.), decided Nov. 6, 1990, Slip Op. 13,583.

II. REORGANIZATION UNDER THE IRA IS CONCLUSIVE AS TO TRIBAL STATUS.

Secretarial approval of a tribal constitution adopted pursuant to section 16 of the IRA, 25 U.S.C. § 476, constitutes federal recognition of tribal status. The Ninth Circuit, following this principle, identified two factors that are determinative of tribal status for purposes of 28 U.S.C. § 1362: (1) whether an Indian group has a governing body approved by the Secretary of the Interior pursuant to section 16 of the Indian Reorganization Act, or (2) whether an Indian group is listed as a Native village in ANCSA. *Village of Noatak v. Hoffman*, 896 F.2d 1157, 1160 (instant case); *Native Village of Venetie v. State of Alaska*, — F.2d — (9th Cir.),

government, and inhabiting a particular though sometimes ill-defined territory. . . ."

This definition has formed the basis for further recognition by the courts and the Executive. See *Passamaquoddy Tribe v. Morton*, 528 F.2d 370, 377-378 (1st Cir. 1975); *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 582 (1st Cir.), cert. denied, 444 U.S. 866 (1979); *Village of Noatak v. Hoffman*, 896 F.2d 1157, 1160 (instant case); 25 C.F.R. § 83.7 (1990). Clearly, Alaska Native communities fit this definition. Alaska Natives inhabiting a particular village are members of the same or similar race; there is one form of government; and the village is in a particular locale. Even petitioner concedes, "most Alaska Native villages probably would qualify as tribes" under the criteria contained in case law or 25 C.F.R. § 83.7. Petitioner's brief at 8 and 36. On September 10, 1990, Governor Steve Cowper issued an administrative order declaring that the State will treat as a tribe any Alaskan Native group exhibiting the commonly understood attributes of a tribe as defined by the federal government. He wrote, "for example, we believe that the Native residents of a majority of communities listed as a Native village in the Alaska Native Claims Settlement Act (ANCSA) should be considered a tribe." Alaska Governor's Admin. Order No. 123, Sept. 10, 1990.

decided Nov. 6, 1990, Slip Op. 13,583. See also *Price v. Hawaii*, 764 F.2d 623, 626-627 (9th Cir. 1985), cert. denied, 474 U.S. 1055 (1986). Alaska Native communities which satisfy one or both of these criteria must be accorded tribal status. The Tribe has organized itself under section 16 of the IRA with a Constitution approved by the Secretary of the Interior under that Act and, therefore, has such tribal status.

The exercise of governmental powers is a basic tribal function. See F. Cohen, *Handbook of Federal Indian Law* at 271 (1942). An IRA constitution is the "written organizational framework of any tribe reorganized pursuant to a Federal statute for the exercise of governmental powers." 25 C.F.R. § 81.1(g) (1990). Thus, Indian and Alaska Native groups that exercise governmental functions pursuant to the adoption of IRA constitutions are properly considered tribes.¹¹ Cohen writes that where, "the Indians of a given reservation organize and adopt a constitution under sec. 16, it has been administratively held that they thereby become a tribe." Cohen, *Handbook of Federal Indian Law* at 271 (1942). Therefore, this Court must recognize the Tribe's tribal status since the Tribe has chosen to exercise rights of self-government through the adoption of a constitution under section 16 of the IRA, the Executive branch has approved such exercise. The Tribe's assumption of governmental powers is seen in the following provisions of

¹¹ Perhaps the State's refusal to recognize the tribal status of Alaska Native communities is related to its inability to recognize the communities' traditional powers of self-government. A 1986 Governor's task force report acknowledged that the emotional nature of Alaska Native sovereignty "has impeded the ability of policymakers in the executive and legislative branches of state government to develop and implement a coherent policy on Native sovereignty. And until such a time as they acquire a clear and concise understanding of the facts and law relating to Native sovereignty, it is unlikely that they will be able to do so." *Governor's Task Force, Report on Federal-State-Tribal Relations Submitted To Governor Bill Sheffield*, 3 (1986).

the Constitution and By-Laws of the Metlakatla Indian Community, Annette Islands Reserve, Alaska ("Constitution and By-Laws").¹²

The Community's Constitution and By-Laws states that the Community reorganized itself under section 16 of the IRA in order "to enjoy greater freedom and opportunity in the handling of our affairs and in providing for the welfare of our people." Constitution and By-Laws, Preamble. App. at 1a. The Secretary's approval of the Constitution and By-Laws recognized the Community's ability to govern itself.

The Community's governmental powers are set forth within the main body of the Constitution and By-Laws. Under Article I, the Community exercises "jurisdiction over all the territory and waters described . . . and such other lands and waters as may in the future be acquired by or reserved for the Community." App. at 1a-2a. Under Article II, the Community exercises jurisdiction over its membership. App. at 2a. As the courts have acknowledged, a tribe's right to define its own membership for tribal purposes is central to its existence. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978); see also Cohen, *Handbook of Federal Indian Law* at 20-23 (1982).

Article IV confers upon the Council the power:

"[T]o pass such ordinances for the *local government* of the Community as shall not be in conflict with the laws of the United States, and, wherever there is no applicable clause of the Constitution nor an ordinance of the Metlakatla Indian Community the Council shall have authority to apply and enforce federal law within the boundaries of the Annette Islands Reserve as the law of the Community, except in cases over which the District Court for Alaska may have exclusive jurisdiction."

¹² Selected provisions of the Tribe's Constitution and By-Laws are reprinted in the appendix attached to this brief.

Constitution and By-Laws, Section 1, Article IV (emphasis added). App. at 4a. Under Article IV the Council may prevent the sale of lands or community assets, negotiate with "the Federal and Territorial governments," levy taxes, and direct elections. App. at 4a-7a. Article V authorizes the establishment of a judicial branch which the Council has implemented. App. at 7a.

Together, these provisions demonstrate the governmental purpose behind reorganization under the IRA. As stated by Cohen, "the IRA was intended to provide a mechanism for the tribe as a governmental unit to interact with and adapt to a modern society, rather than to force the assimilation of individual Indians." Cohen, *Handbook of Federal Indian Law* at 147 (1982) (emphasis added). Accordingly, an Alaska Native community comprised of members for whom the Secretary of the Interior has approved an IRA constitution is a tribe.

III. FEDERAL STATUTES RECOGNIZE ALASKA NATIVE VILLAGES AS INDIAN TRIBES.

The Metlakatla Indian Community's tribal status is also confirmed by the Indian Self-Determination and Education Assistance Act ("the Self-Determination Act"), 25 U.S.C. §§ 450-450n. The Self-Determination Act is the most important and comprehensive piece of Indian legislation enacted by Congress since the Indian Reorganization Act of 1934. To govern themselves more efficiently, Congress gave Indian and Alaska Native communities unprecedented rights to compel federal agencies to turn over to them the administration of federal programs for the benefit of their members. The Self-Determination Act expressly includes Alaska Native villages such as the Tribe within the definition of "Indian tribes." 25 U.S.C. § 450b(e). All Alaska Native villages as defined in ANCSA are included within the Congressional definition of Indian tribe in the Self-Determination Act. *Id.* Thus, the Act makes clear that these villages, including the Tribe, are political entities

capable of self-government. The Self-Determination Act is both an express and implicit recognition of the tribal status of Alaska Native villages.

Section 2 of the Self-Determination Act states:

"The Congress declares its commitment to . . . the establishment of a *meaningful* self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and *meaningful* participation by the Indian people in the planning, conduct and administration of those programs and services. In accordance with this policy, the United States is *committed* to supporting and assisting Indian tribes in the development of *strong and stable governments*, - capable of administering quality programs and developing the economies of their respective communities."

25 U.S.C. § 450a(b) (emphasis added). This declaration sets a Congressional policy, one that is relevant in interpreting 28 U.S.C. § 1362.

In section 104 of the Self-Determination Act, Congress provided for grants to tribal organizations "for the strengthening or improvement of tribal government," including the development and administration of financial management and personnel systems, the construction and operation of tribal facilities and resources, and the acquisition of land. 25 U.S.C. § 450h(a)(1) and (3). Congressional recognition and support of Indian and Alaska Native self-government is unmistakable.

In sections 102 and 103 of the Self-Determination Act, Congress required the federal government to contract with tribes or tribal organizations for the planning and operation of federal programs. 25 U.S.C. §§ 450f and 450g.¹³ Implicit within these provisions is the assump-

¹³ 25 U.S.C. § 450f(a)(1) states "[t]he Secretary [of the Interior] is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with any tribal organization. . . ." 25 U.S.C. § 450g(a) places a similar duty upon the Secretary of Health and Human Services.

tion that Alaska Native communities, like other Indian tribes, are fully capable of performing governmental functions on the behalf of, and for, their own members.

Congress also recognized the governmental nature of Indian tribes, including Alaska Native communities, by providing in section 110 of the Self-Determination Act that nothing in the Act would diminish the sovereign immunity enjoyed by a tribe or terminate the trust responsibility of the United States with respect to the Indian people. 25 U.S.C. § 450n.

Congressional recognition and response to the need for Indian and Alaska Native tribal self-government is overwhelmingly apparent throughout the Self-Determination Act. In section 3 of the Act, Congress stated that it "hereby recognizes the obligation of the United States to *respond* to the strong expression of the Indian people for self-determination." 25 U.S.C. § 450(a) (emphasis added). The recognition of tribal needs implies that tribal communities are important components of our society. Self-determination requires that we empower tribal communities with the ability to govern and protect themselves in a meaningful way. The right to redress state wrongs in federal court is one such way. Indeed, the purpose of 28 U.S.C. § 1362 was to enable tribes to "take independent steps to protect and assert their constitutional, statutory, and treaty rights." Cohen, *Handbook of Federal Indian Law* at 204 (1982). The denial of Alaska Native villages' right to bring suit under § 1362 will unquestionably limit the ability of the Native villages to exercise self-governing powers. If self-determination has any substance, it lies in the ability of a tribal community to use customary sovereign powers.

An Indian tribe recognized and organized under federal law must have access to the federal courts in order to assert and defend its governmental authority against infringement by state government. To rule otherwise would be to undermine the United States' fundamental

policy of encouraging the development of "strong and stable" tribal governments. Accordingly, the Court must find that those Alaska Native communities reorganized under the IRA or defined as tribes in other federal legislation are tribes.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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December 17, 1990

APPENDIX

APPENDIX

CONSTITUTION AND BY-LAWS
OF THE METLAKATLA INDIAN COMMUNITY,
ANNETTE ISLANDS RESERVE, ALASKA

[SELECTED PROVISIONS]

PREAMBLE

Whereas, by the act of March 3, 1891, the Congress of the United States set apart the lands known as Annette Islands for the use and occupancy of the Metlakatla Indians and other natives of Alaska who might be permitted to join them; and

Whereas, the President of the United States on April 28, 1916, reserved the waters surrounding these islands to a distance of 3,000 feet from the shore line for the use and benefit of the Metlakatla Indians and such other Alaska natives as had joined or might join them; and

Whereas, the Metlakatla Indians have for many years enjoyed a large share of the responsibility for the administration of their affairs under the "Rules and Regulations for Annette Islands Reserve" approved by the Secretary of the Interior on January 28, 1915.

Now, therefore, we, the Metlakatla Indians of Annette Islands Reserve, desiring to take advantage of the benefits available to Indian communities under the acts of Congress of May 1, 1936, and June 18, 1934, and to enjoy greater freedom and opportunity in the handling of our affairs and in providing for the welfare of our people do ordain and establish this Constitution for the Metlakatla Indian Community of the Annette Islands Reserve.

ARTICLE I—JURISDICTION

The Metlakatla Indian Community shall for all purposes of this Constitution exercise jurisdiction over all

the territory and waters described in the aforesaid Act of March 3, 1891, and the Presidential Proclamation of April 28, 1916, and such other lands and waters as may in the future be acquired by or reserved for the Community.

ARTICLE II—MEMBERSHIP

SECTION 1. The members of the Metlakatla Indian Community shall be all the adult persons whose names appear on a list of the members of the Annette Islands Reserve prepared by the Council of the reserve with the assistance of the local representative of the Office of Indian Affairs. The Community Council shall maintain a current list of all members of the Community.

SECTION 2. Before exercising the right to vote for members of the Council or otherwise to participate in the government of the Community, natives of Metlakatla now 21 years old or over, all minors coming of age, and all other natives of Alaska who may be admitted to membership in the Community by vote of the Council, as hereinafter provided, shall subscribe to the following declaration:

DECLARATION

"We, the people of the Metlakatla Indian Community of the Annette Islands Reserve, Alaska, do severally subscribe to the following principles of good citizenship:

"1. To be faithful and loyal to the Government of the United States of America.

"2. To be loyal to the local government of our Community, to obey its ordinances and regulations, and to obey all applicable laws of the Territory of Alaska and of the United States.

"3. To cooperate earnestly in all endeavors for the education of our children, for the advancement of the Community, and for the suppression of all forms of vice."

SECTION 3. All minor children of present or former members of the Annette Islands Reserve or of the Community shall be considered members of the Community until they reach their majority, at which time, in order to continue their membership, they must sign the declaration as provided in paragraph 3, of section 4 of this Article.

SECTION 4. A native of Alaska of indigenous race, over 21 years of age, who has maintained residence within the Annette Islands Reserve for a period of not less than one year, hereafter desiring to become a member of the Community shall proceed as follows:

1. Make application in writing to the Council at Metlakatla, Alaska, for admission to membership in the Community.

2. If the Council approves the application, by a vote of three-fourths of its entire membership, the applicant shall come before a meeting of the Council upon proper notice of the time and place of such meeting.

3. In the presence of the mayor and Council, the declaration in section 2 of this Article shall be read to the applicant, and he or she shall sign a copy of the declaration before two witnesses.

4. After the declaration has been duly signed and witnessed the mayor shall declare the applicant a member of the Metlakatla Indian Community.

5. Minor children of persons so admitted shall be members of the Community, but upon attaining their majority they shall, in order to continue their membership, proceed as set forth in paragraph 3 above.

SECTION 5. The Council is authorized, by a vote of three-fourths of its entire membership, to elect as members of the Community, with full rights and privileges, such British Columbia Indians as may have joined the colony at Metlakatla since January 1, 1900, and main-

tained residence there for a period of not less than two years.

SECTION 6. Continuous absence from Annette Islands Reserve for two years or longer, unless the member so absent shall notify the Council in writing, within such two-year period, of his intention to return, shall constitute forfeiture of membership in the Community. Such person may be readmitted to membership in the Community, as provided in Section 4 of this Article.

ARTICLE IV—THE POWERS OF THE COUNCIL

SECTION 1. The Council shall have power to pass such ordinances for the local government of the Community as shall not be in conflict with the laws of the United States, and, wherever there is no applicable clause of the Constitution nor an ordinance of the Metlakatla Indian Community the Council shall have authority to apply and enforce Federal law within the boundaries of the Annette Islands Reserve as the law of the Community, except in cases over which the District Court for Alaska may have exclusive jurisdiction.

A copy of each ordinance passed by the Council and certified by the signature of the mayor or of the acting mayor shall, within three days after its passage, be handed by the secretary to the local representative of the Office of Indian Affairs at Metlakatla.

SECTION 2. The Council shall have power to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease or encumbrance of community lands, interests in lands, or other community assets without the consent of the Community; and to negotiate with the Federal and Territorial governments.

SECTION 3. The Council is authorized to levy an annual tax of three dollars (\$3), or of such a sum as it may deem necessary not exceeding three dollars (\$3) upon

each able-bodied male member of the Community between the ages of 21 and 60, said tax to be collected by the secretary and expended for public purposes as the Council shall direct. The Council may, by a two-thirds vote of its membership, remit the annual tax of any individual who because of continued sickness, poverty, or physical or mental disability is unable to pay said tax.

SECTION 4. The Council shall have authority to direct by its ordinance that every able-bodied male resident of the Community shall perform, without remuneration, in each calendar year not more than two days' labor of 8 hours each on the streets, roads, wharves, public buildings, or other public improvements, within the Annette Islands Reserve undertaken by order of the Council.

The secretary shall keep a record of the labor thus performed, showing the dates, the number of hours, and the character of the service rendered by each person.

SECTION 5. The Council shall direct the secretary to draw warrants on the treasurer in payment of all valid claims against funds subject to its control. All such warrants shall be signed by the mayor or by the acting mayor.

SECTION 6. The Council may issue to members of the Community permits to occupy land within the reserve and it may cancel such permits as provided in Section 1, Article VI of this Constitution.

SECTION 7. At the first meeting of the Council in each year the Council shall elect an auditing committee of three members and a public health committee of three members. From time to time, as the Council may deem necessary, it may constitute other committees and define their duties. All committees elected under this Constitution shall serve without remuneration.

The secretary shall, within three days after their election report the names of persons elected to member-

ship in committees to the local representative of the Office of Indian Affairs at Metlakatla.

SECTION 8. The Council shall have authority to employ such a number of competent persons as constables as it may deem necessary in order to enforce its ordinances, to define their duties and to fix their remuneration, if any. The constables shall be under the immediate control of the mayor or of the acting mayor, subject to the instructions of the Council.

SECTION 9. The Council may create such additional offices, not in conflict with this Constitution, as it may deem necessary for the effective administration of the local government, provide for the filling of such offices, define the duties of the same, and fix the amount of the remuneration, if any.

SECTION 10. The Council shall prescribe rules regarding the place and conditions of the annual election. Notices of said election shall be posted in three or more places in the reserve at least 10 days prior to such election.

SECTION 11. The Council may by the vote of three-fourths of its entire membership remove the mayor, secretary, treasurer or other official, but only after reasonable notice and upon sufficient evidence offered at an open meeting that he is unworthy to hold office; and the Council may by the same procedure and the vote of three-fourths of its entire membership, expel a member of the Council.

SECTION 12. When a vacancy occurs in the membership of the Council or in any office, the Council may, until the time of the next annual election, temporarily fill such vacancy by a two-thirds vote of its membership, and provide for the induction into office of the person so elected.

SECTION 13. The Council may provide for mass meetings of the members of the Community. Public questions

may be discussed at these meetings and the secretary of the Council shall take note of any petition made on these occasions and preserve it among the official records of the Community.

ARTICLE V—JUDICIARY

SECTION 1. The Council shall at its first meeting of each year designate a magistrate for the Community.

SECTION 2. The magistrate shall have power to impose upon any violator of an ordinance passed by the Council, such a fine as may be deemed just not exceeding three hundred and sixty dollars (\$360) for each offense.

SECTION 3. In each case, before the magistrate makes his decision, the person accused of such violation shall be given opportunity to appear before the magistrate and make any statement that he or she may wish to make.

SECTION 4. The secretary shall, within three days after such a fine has been imposed by the magistrate, hand to the person upon whom the fine has been imposed written notification thereof, countersigned by the mayor or acting mayor, setting forth the amount of the fine and the reasons for which it has been imposed.

SECTION 5. Fines thus imposed shall be collected by the secretary and by him deposited with the treasurer, to be expended at the direction of the Council as other funds are expended.

SECTION 6. Whenever a fine which has been thus imposed remains unpaid for a period of four weeks from and including the day upon which notification thereof was received by the delinquent, the magistrate may, in lieu of the payment of the fine, require the delinquent to labor not more than ninety (90) days on the streets or other public works of the Reserve. The expenses in connection with such sentence shall be paid from funds under the control of the Council.